

MARTINE
PENILLA &
GENCARELLA, LLP



INTELLECTUAL
PROPERTY
COUNSEL

October 24, 2006

United States Patent and Trademark Office
Post Office 1450
Alexandria, Virginia 22313-1450

VIA FACSIMILE ONLY

Attention: Deposit Account Refunds

Re: U.S. Patent Application Entitled: METHOD AND APPARATUS FOR MAKING A
COMPUTATIONAL SERVICE HIGHLY AVAILABLE
Application No. 09/513,015 Filing Date: February 20, 2000
Our Reference: SUNMP576 Deposit Account No. 50-0805

Gentlemen:

This letter is to request a refund for funds that were deducted in error from our deposit account. Extensions for response within fourth month and fifth month are incorrect, as The Appeal Brief and Applicants Reply Brief were both filed within the allowable time.

On May 26, 2006, we received the Notice of Panel Decision from Pre-Appeal Brief Review; **DATE MAILED: 05/24/2006**. The time period for filing an appeal brief will be reset to be one month from mailing this decision. On Friday, June 23, 2006, the Transmittal and Appeal Brief were mailed, via the USPS First Class Mail. Enclosed are copies of the aforementioned referenced materials.

On July 31, 2006, we received the Examiner's Answer, **DATE MAILED: 07/28/2006**, (in response to the appeal brief filed June 23, 2006). The time period for responding is extended two (2) months from the mailing of this office communication. On Thursday, September 28, 2006, the Applicant's Reply Brief was mailed via USPS First Class Mail. Enclosed are copies of the aforementioned referenced materials.

We also enclose a copy of a computer printout of our Monthly Statement of Deposit Account, dated July 31, 2006. The Statement shows two (2) debits dated July 25, 2006 regarding the above-identified patent application. The debits are as follows: \$1,5900.00 for Fee Code 1254 (Extension for response within fourth month) and \$570.00 for Fee Code 1255 (Extension for response within fifth month). The combined total equals \$2,160.00.

As the amount described above should not have been charged to our account. Please refund our Deposit Account No. 50-0805 in the total amount of \$2,160.00 as soon as possible. Thank you for your assistance.

Sincerely,
MARTINE PENILLA & GENCARELLA, LLP

Debbie Triacca
Debbie Triacca
Assistant Office Manager

/dt
Enclosures

710 Lakeway Drive, Suite 200 ■ Sunnyvale, California 94085
PHONE: 408-749-6900 ■ FAX: 408-749-6901 ■ www.mplplaw.com

PAGE 2/11 * RCVD AT 10/24/2006 8:09:03 PM [Eastern Daylight Time] * SVR:USPTO-EPRF-2/16 * DNIS:2738500 * CSID:408 749 6901 * DURATION (mm-ss):03-50

BEST AVAILABLE COPY

FACSIMILE COVER SHEET



710 Lakeway Drive, Suite 200
Sunnyvale, California 94085

Phone: 408.749.6900
Fax: 408.749.6901
www.mpiplaw.com

INTELLECTUAL PROPERTY COUNSEL

MARTINE PENILLA & GENCARELLA, LLP

CONFIDENTIALITY NOTICE

The document(s) accompanying this telecopier transmission contain confidential information that is legally privileged. This information is intended only for the use of the individual(s) or entity(ies) named above. If you are not the intended recipient, or have received this telecopier transmission in error, you are hereby notified that **ANY DISCLOSURE, COPYING, DISTRIBUTION, OR THE TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THIS TELECOPIED INFORMATION IS STRICTLY PROHIBITED.** If you have received this telecopy in error, please notify the sender (above) immediately by telephone or email at info@mpiplaw.com to arrange the return of the original documents at its expense.

Tuesday, October 24, 2006


TOTAL PAGES INCLUDING THIS SHEET:	11	RECEIVER TEL NO: 571-272-6500
SENDER: Debbie Triacca		RECEIVER FAX NO: 571-273-6500
RECEIVER: Refund Branch, Deposit Account		OUR FILE REF: SUNMP576
COMPANY: UNITED STATES PATENT & TRADEMARK OFFICE		PATENT APPLICATION SERIAL NO. 09/513,015
		TITLE: METHOD AND APPARATUS FOR MAKING A COMPUTATIONAL SERVICE HIGHLY AVAILABLE
		PTO DEPOSIT ACCOUNT No. 50-0805

Message:

Please see attached:

1. Letter requesting refund and copies of the following references;
2. Notice of Panel Decision from Pre-Appeal Brief Review;
3. Office Communication cover letter (date mailed: 05/24/06);
4. Transmittal of Appeal Brief (mailed June 23, 2006);
5. Patent Postcard and Appeal Brief Fee check #16597 (dated June 23, 2006);
6. Examiner's Answer (dated July 28, 2006);
7. Office Communication cover letter (date mailed: 07/28/06);
8. Applicant's Reply Brief (date mailed: September 28, 2006);
9. Patent Postcard for Applicant's Reply Brief (dated September 28, 2006);
10. PTO Monthly Statement of Deposit Account (dated 7-31-06).

BEST AVAILABLE COPY

Application Number 	Application/Control No. 09/513,015	Applicant(s)/Patent under Review BLOCK ET AL.	
	Andrew Caldwell	Art Unit 2142	
Document Code - AP.PRE.DEC			

Notice of Panel Decision from Pre-Appeal Brief Review



This is in response to the Pre-Appeal Brief Request for Review filed December 5, 2005.

1. ☐ **Improper Request** – The Request is improper and a conference will not be held for the following reason(s):

- ☐ The Notice of Appeal has not been filed concurrent with the Pre-Appeal Brief Request.
- ☐ The request does not include reasons why a review is appropriate.
- ☐ A proposed amendment is included with the Pre-Appeal Brief request.
- ☐ Other:

The time period for filing a response continues to run from the receipt date of the Notice of Appeal or from the mail date of the last Office communication, if no Notice of Appeal has been received.

2. ☒ **Proceed to Board of Patent Appeals and Interferences** – A Pre-Appeal Brief conference has been held. The application remains under appeal because there is at least one actual issue for appeal. Applicant is required to submit an appeal brief in accordance with 37 CFR 41.37. The time period for filing an appeal brief will be reset to be one month from mailing this decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the notice of appeal, as applicable.

☒ The panel has determined the status of the claim(s) is as follows:

Claim(s) allowed: NONE.

Claim(s) objected to: NONE.

Claim(s) rejected: 1-5, 7-8, 17-28.

Claim(s) withdrawn from consideration: NONE.

3. ☐ **Allowable application** – A conference has been held. The rejection is withdrawn and a Notice of Allowance will be mailed. Prosecution on the merits remains closed. No further action is required by applicant at this time.

4. ☐ **Reopen Prosecution** – A conference has been held. The rejection is withdrawn and a new Office action will be mailed. No further action is required by applicant at this time.

All participants:

(1) Andrew Caldwell

(2) Beatriz Prieto

Andrew Caldwell
ANDREW CALDWELL (3) Lynne Browne
PATENT EXAMINER

(4) _____

U.S. Patent and Trademark Office

Part of Paper No. 05172006

PATENT POSTCARD - Customer No. 32291

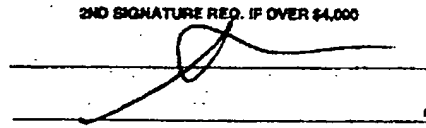
Docket No. **SUNMP576** App. No.: **09/513,015** Date: **June 23, 2006**
 By: **GAB:slc** Filed: **February 25, 2000** Express Mail No.:
 Inventors: **BLOCK et al.**
 Title: **METHOD AND APPARATUS FOR MAKING A COMPUTATIONAL SERVICE HIGHLY AVAILABLE**

The following has been received in the U.S. Patent & Trademark Office on the date stamped below:

MPG, LLP
2006

DOCKETED - ATTY

- Appeal Brief Transmittal (2 pages) (in duplicate)
- Appeal Brief (11 pages), with Appendix A (Pages A1-A7)
- Copy of Notice of Panel Decision from Pre-Appeal Brief Review (2 pages)
- Check No. 16597 in the amount of \$500.00

MARTINE PENILLA & GENCARELLA, LLP 04-01 INTELLECTUAL PROPERTY LAW 710 LAKEWAY DRIVE, SUITE 200 SUNNYVALE, CA 94085-4013		CITIBANK, FEDERAL SAVINGS BANK 3490 STEVENS CREEK BLVD. SAN JOSE, CA 95117 90-7116/3211	16597
Pay to the Order of Commissioner for Patents		6/23/2006 \$ **500.00	
Five Hundred and 00/100*****		Dollars	
Commissioner of Patents P.O. Box 1450 Alexandria, VA 22313-1450		2ND SIGNATURE REQ. IF OVER \$4,000 	
SUNMP576/P4722/AB 16597			

MARTINE PENILLA & GENCARELLA, LLP INTELLECTUAL PROPERTY LAW

Commissioner for Patents

Appeal Brief Fee

6/23/2006

16597

500.00

CitiBank SC Check SUNMP576/P4722/AB

500.00

BEST AVAILABLE COPY



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/513,015	02/25/2000	Robert J. Block	83000.1135;P4722/ARG	7018
32291	7590	05/24/2006		
MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085				
			EXAMINER	
			PRIETO, BEATRIZ	
			ART UNIT	PAPER NUMBER
			2142	

DATE MAILED: 05/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
BLOCK et al.

Application No.: 09/513,015

Filed: February 25, 2000

For: METHOD AND APPARATUS FOR
MAKING A COMPUTATIONAL
SERVICE HIGHLY AVAILABLE

Group Art Unit: 2142

Examiner: Prieto, Beatriz

Docket No.: SUNMP576

Date: June 23, 2006

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 23, 2006.

Signed: 

Sylvia Castillo

TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION - 37 CFR 41.67)

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is in furtherance of the Notice of Panel Decision from Pre-Appeal Brief Review received by the United States Patent and Trademark Office on May 24, 2006.

This application is on behalf of:

☐ Small Entity ☒ Large Entity

Pursuant to 37 CFR 41.20(b)(2), the fee for filing the Appeal Brief is:

☐ \$250.00 (Small Entity) ☒ \$500.00 (Large Entity)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136 apply:



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAIL

JUL 28 2006

Technology Center

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/513,015
Filing Date: February 25, 2000
Appellant(s): BLOCK ET AL.

Gina A. Bibby (Reg. No. 4,407)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 23, 2006 appealing from the Office action mailed August 31, 2005.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/513,015	02/25/2000	Robert J. Block	83000.1135;P4722/ARG	7018
32291 7590 07/28/2006 MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085			SUMMARY EXAMINER PRIETO, BEATRIZ	
			ART UNIT 2142	PAPER NUMBER

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of:

BLOCK ET. AL.

Application No.: 09/513,015

Filed: February 25, 2000

For: METHOD AND APPARATUS
FOR MAKING A COMPUTATIONAL
SERVICE HIGHLY AVAILABLE

) Examiner: PRIETO, BEATRIZ

) Art Unit: 2142

) Confirmation No.: 7018

) Atty. Docket No.: SUNMP576

) Date: September 28, 2006

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being
deposited with the United States Postal Service as First
Class Mail to: Commissioner for Patents, P.O. Box
1450 Alexandria, VA 22313-1450 on September 28,
2006.

Signed: 

Sylvia Castillo

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S REPLY BRIEF UNDER 37 C.F.R. § 41.41

Dear Sir:

Applicants submit this paper in response to the Examiner's Answer mailed July
28, 2006, the two-month period for reply extends to September 28, 2006. Accordingly,
this reply is believed to be proper.

PATENT POSTCARD - Customer No. 32291

Docket No. **SUNMPS76** App. No.: **09/513,015** Date: **September 28, 2006**
By: **GAB:slc** Filed: **February 25, 2000** Express Mail No.:
Inventors: **BLOCK et al.**
Title: **METHOD AND APPARATUS FOR MAKING A COMPUTATIONAL
SERVICE HIGHLY AVAILABLE**

*The following has been received in the U.S. Patent & Trademark Office on
the date stamped below:*

Appellant's Reply Brief Under 37 C.F.R. § 41.41 (9 pages)

MPG, LLP

SEP 28 2006

DOCKETED-ATTY **WJ**



UNITED STATES PATENT AND TRADEMARK OFFICE

United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MONTHLY STATEMENT OF DEPOSIT ACCOUNT

To replenish your deposit account, detach and return top portion
with your check. Make checks payable to "Director of the USPTO."

MARTINE, PENILLA & GENCARELLA
PETER B. MARTINE
710 LAKEWAY DRIVE
SUITE 170
SUNNYVALE CA 94086

FINA

Account No.	500805
Date	7-31-06
Page	1

PLEASE SEND REMITTANCES TO:
U.S. Patent and Trademark Office
P.O. Box 371279
Pittsburgh, PA 15251-7279

Call the Deposit Account Branch at 571-272-6500 for assistance.

DATE POSTED MO. DAY YR.	CONTROL NO.	DESCRIPTION (Serial, Patent, TM, Order)	DOCKET NO.	FEE CODE	CHARGES/ CREDITS	BALANCE
7 3 06	3	PCT/US06/23134	LAM2P517.P	1703	12.00	18909.00
7 3 06	39	10626267	JLNP163	1251	-120.00	19029.00
7 7 06	11	11374898		9204	-65.00	19094.00
7 7 06	17	10326348	LAM2P384	1251	120.00	18974.00
7 7 06	380	10769498	LAM2P447	8021	40.00	18934.00
7 10 06	178	29251260	SONYPO48C	8007	140.00	18794.00
7 11 06	1151	11456484	ALTEP109	1011	300.00	18494.00
7 11 06	1152	11456484	ALTEP109	1111	500.00	17994.00
7 11 06	1153	11456484	ALTEP109	1311	200.00	17794.00
7 11 06	1154	11456484	ALTEP109	1202	50.00	17744.00
7 11 06	1626	11456545	LAM2P540	1011	300.00	17444.00
7 11 06	1627	11456545	LAM2P540	1111	500.00	16944.00
7 11 06	1628	11456545	LAM2P540	1311	200.00	16744.00
7 11 06	1629	11456545	LAM2P540	1201	200.00	16544.00
7 13 06	392	11204907	LAM2P515	8007	20.00	16524.00
7 14 06	2	11198489	LAM2P511	8007	40.00	16484.00
7 17 06	34	11427266	LAM2P567B	1201	200.00	16284.00
7 20 06	1	11059130	SYNXP001A	1202	300.00	15984.00
7 21 06	1097	11458962	ALTEP0820 / A0188301	1011	300.00	15684.00
7 21 06	1098	11458962	ALTEP0820 / A0188301	1111	500.00	15184.00
7 21 06	1099	11458962	ALTEP0820 / A0188301	1311	200.00	14984.00
7 24 06	9	11426003	PDFSP002/PDFS0048	2201	100.00	14884.00
7 25 06	1	09513015	83000.1135;P4722/ARG	1254	1590.00	13294.00
7 25 06	2	09513015	83000.1135;P4722/ARG	1255	570.00	12724.00
7 25 06	294	0146540052	LAM2P431.CN	8014	25.00	12699.00
7 26 06	18	10115714	NPSTR-01700	1462	400.00	12299.00
7 28 06	6	51545661		9204	-2.00	12301.00
7 28 06	120	10645729	ADAPP244	1251	120.00	12181.00
7 28 06	123	11198489	LAM2P511	8007	20.00	12161.00
AN AMOUNT SUFFICIENT TO COVER ALL SERVICES REQUESTED MUST ALWAYS BE ON DEPOSIT			OPENING BALANCE	TOTAL CHARGES	TOTAL CREDITS	CLOSING BALANCE
			18921.00	6947.00	187.00	12161.00

MS020D (5/2006)

*** O.D. INDICATES OVERDRAWN

PAGE 11/11 * RCVD AT 10/24/2006 8:05:03 PM [Eastern Daylight Time] * SVR:USPTO-EPXRF-2/16 * DNS:2738500 * CSID:408 749 6901 * DURATION (mm-ss):03-50

BEST AVAILABLE COPY

Document code: WFEE

United States Patent and Trademark Office
Sales Receipt for Accounting Date: 07/25/2006

SFORD1 SALE #00000002 Mailroom Dt: 06/27/2006 500805 09513015
01 FC:1255 570.00 DA

Adjustment date: 11/01/2006 SDENBOB1
07/25/2006 SFORD1 00000002 500805 09513015
01 FC:1255 570.00 CR

Document code: WFEE

United States Patent and Trademark Office
Sales Receipt for Accounting Date: 07/25/2006

SFORD1 SALE #00000001 Mailroom Dt: 06/27/2006 500805 09513015
01 FC:1254 1590.00 DA

justment date: 11/01/2006 SDENB001
7/25/2006/SFORD1 00000001 500805 09513015
FC:1254 1590.00 CR